



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/170426

PRELIMINARY RECITALS

Pursuant to a petition filed December 01, 2015, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 08, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly ended the Petitioner's FoodShare benefits effective December 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], HSPC, Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 27, 2015, the Petitioner completed a Six Month Report Form for FoodShare benefits. (Exhibit 2, pg. 3)

3. On June 13, 2015, the agency sent the Petitioner an informational mailing regarding the requirements for Able Bodied Adults Without Dependents. (Exhibit 2, pgs. 3-5)
4. On July 31, 2015, the Petitioner completed a FoodShare renewal. (Exhibit 2, pg. 3)
5. On August 3, 2015, the agency sent the Petitioner a letter referring him to the FSET program and advising him that his time limited benefits began in August 2015. (Exhibit 2, pgs. 11-12)
6. The Petitioner enrolled in the FSET program on September 17, 2015. (Exhibit 3, pg. 13)
7. At that time, Petitioner's employment plan required him to work 27 hours per week and nothing else. (Exhibit 3, pg. 19)
8. In October 2015, the Petitioner did not work 20 hours per week. (Testimony of Petitioner)
9. In November 2015, the Petitioner did not work 20 hours per week. (Testimony of Petitioner)
10. On November 18, 2015, the agency sent the Petitioner a notice, advising him that his FoodShare benefits would be ending effective December 1, 2015, because he used up three months of time limited benefits. (Exhibit 2, pgs. 25-28)

DISCUSSION

Effective July 1, 2014, the Department of Health services implemented a new policy limiting benefits that childless adults in Kenosha, Racine and Walworth counties may receive. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2* This policy is referred to as the Able Bodied Adults without Dependents (ABAWD) policy and was implemented statewide effective April 1, 2015. *Id.*

Under ABAWD rules, childless, able-bodied adults must either meet ABAWD work requirements or be exempt from the work requirement in order to receive FoodShare benefits. *FSH §3.17.1.1* ABAWDs who are not exempt and who do not meet the work requirement, are only allowed to receive 3 full months of time-limited benefits in a 36-month period. *Id.*

A person is considered a Non-ABAWD, if that person is:

1. Under 18 or age 50 and older,
2. Unable to work,
3. Residing in a FoodShare household with a child under age 18, or
4. Pregnant

FSH §3.17.1.4

An ABAWD may be exempt from work requirements if the person is:

1. Determined unfit for employment which includes:
 - a. Receiving temporary or permanent disability benefits
 - b. Mentally or physically unable to work, as determined by the IM agency
 - c. Verified as unable to work by a statement from a health care professional or a social worker.
2. Receiving Unemployment Compensation, or has applied for Unemployment Compensation and is complying with those work requirements;
3. Regularly participating in an alcohol or other drug addiction treatment or rehabilitation program; or
4. A student of higher education who is otherwise eligible for FoodShare (see section 3.15.1)
5. A high school student 18 years of age or older, attending high school at least half time;
6. A primary caregiver of a dependent child under age 6 or an incapacitated person;
7. Receiving Transitional FS benefits; or

8. Meeting the ABAWD work requirement.

FSH §3.17.1.4

An ABAWD meets the ABAWD work requirement if one of the following applies:

1. Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
2. Participating and complying with an allowable work program at least 80 hours per month; * [includes FSET]
3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or
4. Participating and complying with the requirements of a workfare program.

FSH, §13.17.1.7

In the case at hand, the FSET office determined that the Petitioner used up his time limited benefits in August 2015, October 2015, and November 2015.

Petitioner does not dispute the fact that he is an Able Bodied Adult Without Dependents. Nor, does the Petitioner dispute the fact that he did not meet work requirements described above. However, the Petitioner argues he qualifies for a student exemption. The Petitioner provided the agency with his student schedule, showing that he was enrolled for six credits, which is half time. At the Petitioner's school, full time students take 12-18 credits. See <http://www.bryantstratton.edu/financial-aid/scholarships>

The Petitioner does not appear to meet the student eligibility requirements under FSH §3.15.1, because he was not working 20 or more hours per week. Further the verification of enrollment that the Petitioner provided was for the winter term, which runs from January 13, 2015 to April 25, 2016. See <http://www.bryantstratton.edu/degrees/academic-calendar/2015-2016-calendar> As such, there is evidence, that he met a student exemption in August, October, or November.

At the hearing, the Petitioner also indicated that he thought he might be exempt, because he helps care for his mother, who is retired and receives both retirement and disability income. However, the exemption states that to be exempt, a FoodShare applicant must be 1) the primary caregiver of the person in question, and 2) the person in question must be incapacitated, not just disabled in some way. When asked if he considered his mother incapacitated, the Respondent stated "no". Consequently, it is found that the Respondent does not qualify for an exemption as the primary caregiver of an incapacitated adult.

The FSET office asserts that the Petitioner did not meet FSET requirements in August 2015, because he did not keep any appointments then. However, the FSET office did not provide any of the appointment notices that were mailed to the Petitioner. Without proof that the Petitioner was adequately notified of his appointments, the determination that he used up one month of his time limited benefits in August 2015 cannot be upheld. I note in the case comments that the Petitioner contacted the agency in August, because he had not received an appointment letter. Also, the PIN comments for August are confusing, because they also indicated that Petitioner did not receive at least one notice; that the Petitioner had contacted the FSET office to get an appointment time, then tried to do a walk in appointment, but was turned away and that the FSET office couldn't figure out whether the Petitioner had done an orientation or not. (See Exhibit 3, pg. 13)

With regard to October and November 2015, the Petitioner does not dispute the fact that he did not work 20 hours per week, as required by his employment plan. As such, the agency correctly determined the Petitioner used up his time limited benefits in those two months.

Because the Petitioner had only used up two months of time limited benefits (October and November), the agency incorrectly ended his benefits in December 2015.

NOTE: Whether Petitioner met the ABAWD requirements in December going forward, was not an issue for this hearing. If the Petitioner has not met the ABAWD requirements and does meet an exemption or have good cause for non-compliance with FSET, he might lose his benefits, again, but that is a separate determination that has yet to be made by the FSET office and the agency.

CONCLUSIONS OF LAW

The agency correctly ended the Petitioner's FoodShare benefits effective December 1, 2015.

THEREFORE, it is

ORDERED

That the agency reinstate the Petitioner's FoodShare benefits back to December 1, 2015. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of March, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 11, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability